

**FILED**

**JUN 09 2006**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RAFAEL FELIX-NUNEZ,

Defendant - Appellant.

No. 05-50916

D.C. No. CR-04-01601-GAF

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Central District of California  
Gary A. Feess, District Judge, Presiding

Submitted June 5, 2006<sup>\*\*</sup>

Before: CANBY, T.G. NELSON and KLEINFELD, Circuit Judges.

A review of the record and the opening brief indicates that the questions raised in this appeal are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

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standard). The Supreme Court's decision in *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), remains binding on this court until the Supreme Court overrules it. *See United States v. Weiland*, 420 F.3d 1062, 1079 n.16 (9th Cir. 2005) (noting that we continue to be bound by the Supreme Court's holding in *Almendarez-Torres* that a district judge may enhance a sentence on the basis of prior convictions, even if the fact of those convictions was not found by a jury beyond a reasonable doubt); *see also United States v. Pacheco-Zepeda*, 234 F.3d 411, 414 (9th Cir. 2000).

Accordingly, we grant the government's motion for summary affirmance.

**AFFIRMED.**